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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 SCOTT SWEED,

15 Defendant.

CASE NO. 2:20-CR-00087-WBS

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: September 14, 2020

TIME: 9:00 a.m.

COURT: Hon. William B. Shubb

17 This case is set for status on September 14, 2020. On May 13, 2020, this Court issued General
18 Order 618, which suspends all jury trials in the Eastern District of California “until further notice.”
19 Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18 U.S.C.
20 § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s judicial
21 emergency, this Court has allowed district judges to continue all criminal matters to a date after May 2,
22 2020.¹ This and previous General Orders, as well as the declarations of judicial emergency, were
23 entered to address public health concerns related to COVID-19.

24 Although the General Orders and declarations of emergency address the district-wide health
25 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
26 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record

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28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
2 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
5 findings on the record “either orally or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
7 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the
9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
10 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.
11 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of
12 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
13 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
18 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
21 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
26 justice exception, § 3161(h)(7) (Local Code T4).²

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28 ² The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on September 14, 2020.
 2. By this stipulation, defendant now moves to continue the status conference until October 20 at 9:00 a.m., and to exclude time between September 14, 2020, and October 26, 2020 at 9:00 under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].
 3. The parties agree and stipulate, and request that the Court find the following:
 - a) The indictment in this case was returned on June 18, 2020.
 - b) The government has represented that the discovery associated with this case includes multiple reports and several hundred photographs.
 - c) Counsel for defendant desires additional time to review discovery, conduct independent factual investigation, meet with his client to discuss resolution alternatives and case strategy, and otherwise prepare for trial.
 - d) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.
 - e) The government does not object to the continuance.
 - f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.
 - g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of September 14, 2020 to October 26, 2020 at 9:00 a.m., inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

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4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: September 9, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ CAMERON L. DESMOND
CAMERON L. DESMOND
Assistant United States Attorney

Dated: September 9, 2020

/s/ Mark Reichel
Mark Reichel
Counsel for Defendant
Scott Sweed

FINDINGS AND ORDER

IT IS SO FOUND AND ORDERED.

Dated: September 9, 2020

William B. Shubb
WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE